No. 2042 **Registered No. N. E. 930.**

TRIPURA GAZETTE

Published by Authority

EXTRAORDINARY ISSUE

Agartala, Friday, September 27, 2019 A. D., Asvina 5, 1941 S. E.

PART—IA-- Orders and Notifications by the Government of India, Statutory Notifications of the Election Commission of India and other Election Notifications published for General Information, orders and Notifications which have originally been published in the "Gazette of India" are only re-published.

GOVERNMENT OF TRIPURA
LAW DEPARTMENT
SECRETARIAT : AGARTALA

No. F.11 (2)-Law/Lib/2018/9385-86 Dated, Agartala, the 25th September, 2019.

Subject :- Re-publication of Central Acts & Amendment Acts in the State Gazette.

1. The Code on Wages, 2019 (Act No. 29 of 2019)

17/09/19
(Rahul Roy)
ALC & Under Secretary, Law,
Government of Tripura.

THE CODE ON WAGES, ACT, 2019

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THE CODE ON WAGES ACT, 2019
AN

ACT

to amend and consolidate the laws relating to wages and bonus and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Code on Wages, 2019. Short title, extent and commencement.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint; and different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Code, unless the context otherwise requires,—

(*a*) "accounting year" means the year commencing on the 1st day of April;

(*b*) "Advisory Board" means the Central Advisory Board or, as the case may be, the State Advisory Board, constituted under section 42;

(*c*) "agricultural income tax law" means any law for the time being in force relating to the levy of tax on agricultural income;

(*d*) "appropriate Government" means,—

(*i*) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government;

(*ii*) in relation to any other establishment, the State Government;

(*e*) "company" means a company as defined in clause (*20*) of section 2 of the Companies Act, 2013; 18 of 2013.

(*f*) "contractor", in relation to an establishment, means a person, who —

(*i*) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or

(*ii*) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor;

(*g*) "contract labour" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include a worker (other than part-time employee) who —

(*i*) is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and

(*ii*) gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;

(*h*) "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force relating to co-operative societies in any State; 2 of 1912.

(*i*) "corporation" means any body corporate established by or under any Central Act, or State Act, but does not include a company or a co-operative society;

(*j*) "direct tax" means—

(*i*) any tax chargeable under the—

(*A*) Income-tax Act, 1961; 43 of 1961.

7 of 1964.

(*B*) Companies (Profits) Surtax Act, 1964;

(*C*) Agricultural income tax law; and

(*ii*) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification, to be a direct tax for the purposes of this Code;

(*k*) "employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union;

52 of 1961.

(*l*) "employer" means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

(*i*) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (*n*) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (*f*) of sub-section (*1*) of section 7 of the said Act, the person so named;

63 of 1948.

(*ii*) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director;

(*iii*) contractor; and

(*iv*) legal representative of a deceased employer;

(*m*) "establishment" means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment;

(*n*) "factory" means a factory as defined in clause (*m*) of section 2 of the Factories Act, 1948;

63 of 1948.

(*o*) "Government establishment" means any office or department of the Government or a local authority;

43 of 1961.

(*p*) "Income-tax Act" means the Income -tax Act, 1961;

(*q*) "industrial dispute" means,—

(*i*) any dispute or difference between employers and employers, or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and

(*ii*) any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker;

(*r*) "Inspector-cum-Facilitator" means a person appointed by the appropriate Government under sub-section (*1*) of section 51;

(*s*) "minimum wage" means the wage fixed under section 6;

(*t*) "notification" means a notification published in the Gazette of India or in the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variations and cognate expressions shall be construed accordingly;

(*u*) "prescribed" means prescribed by rules made by the appropriate Government;

(*v*) "same work or work of a similar nature" means work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;

(*w*) "State" includes a Union territory;

(*x*) "Tribunal" shall have the same meaning as assigned to it in clause (*r*) of section 2 of the Industrial Disputes Act, 1947; 14 of 1947.

(*y*) "wages" means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,— 42 of 2005.

(*i*) basic pay;

(*ii*) dearness allowance; and

(*iii*) retaining allowance, if any,

but does not include—

(*a*) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;

(*b*) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(*c*) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(*d*) any conveyance allowance or the value of any travelling concession;

(*e*) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(*f*) house rent allowance;

(*g*) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;

(*h*) any overtime allowance;

(*i*) any commission payable to the employee;

(*j*) any gratuity payable on the termination of employment;

(*k*) any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment:

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (*a*) to (*i*) exceeds one-half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such

one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (*d*), (*f*), (*g*) and (*h*) shall be taken for computation of wage.

Explanation.—Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee;

52 of 1961.

(*z*) "worker" means any person (except an apprentice as defined under clause (*aa*) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes—

45 of 1955.

(*i*) working journalists as defined in clause (*f*) of section 2 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; and

11 of 1976.

(*ii*) sales promotion employees as defined in clause (*d*) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,

but does not include any such person—

45 of 1950.
46 of 1950.
62 of 1957.

(*a*) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

(*b*) who is employed in the police service or as an officer or other employee of a prison; or

(*c*) who is employed mainly in a managerial or administrative capacity; or

(*d*) who is employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time.

Prohibition of discrimination on ground of gender.

3. (*1*) There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.

(*2*) No employer shall,—

(*i*) for the purposes of complying with the provisions of sub-section (*1*), reduce the rate of wages of any employee; and

(*ii*) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Decision as to disputes with regard to same or similar nature of work.

4. Where there is any dispute as to whether a work is of same or similar nature for the purposes of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.

CHAPTER II

MINIMUM WAGES

Payment of minimum rate of wages.

5. No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.

Fixation of minimum wages.

6. (*1*) Subject to the provisions of section 9, the appropriate Government shall fix the minimum rate of wages payable to employees in accordance with the provisions of section 8.

(*2*) For the purposes of sub-section (*1*), the appropriate Government shall fix a minimum rate of wages—

(*a*) for time work; or

(*b*) for piece work.

(*3*) Where employees are employed on piece work, for the purpose of sub-section (*1*), the appropriate Government shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.

(*4*) The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:—

(*i*) by the hour; or

(*ii*) by the day; or

(*iii*) by the month.

(*5*) Where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed.

(*6*) For the purpose of fixation of minimum rate of wages under this section, the appropriate Government,—

(*a*) shall primarily take into account the skill of workers required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled or geographical area or both;

(*b*) may, in addition to such minimum rate of wages for certain category of workers, take into account their arduousness of work like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work as may be prescribed by that Government; and

(*c*) the norms of such fixation of minimum rate of wages shall be such as may be prescribed.

(*7*) The number of minimum rates of wages referred to in sub-section (*6*) may, as far as possible, be kept at minimum by the appropriate Government.

Components of minimum wages.

7. (*1*) Any minimum rate of wages fixed or revised by the appropriate Government under section 8 may consist of—

(*a*) a basic rate of wages and an allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as "cost of living allowance"); or

(*b*) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(*c*) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(*2*) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification, appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time.

Procedure for fixing and revising minimum wages.

8. (*1*) In fixing minimum rates of wages for the first time or in revising minimum rates of wages under this Code, the appropriate Government shall either—

(*a*) appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or

(*b*) by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

(*2*) Every committee appointed by the appropriate Government under clause (*a*) of sub-section (*1*) shall consist of persons—

(*a*) representing employers;

(*b*) representing employees which shall be equal in number of the members specified in clause (*a*); and

(*c*) independent persons, not exceeding one-third of the total members of the committee.

(*3*) After considering the recommendation of the committee appointed under clause (*a*) of sub-section (*1*) or, as the case may be, all representations received by it before the date specified in the notification under clause (*b*) of that sub-section, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

Provided that where the appropriate Government proposes to revise the minimum rates of wages in the manner specified in clause (*b*) of sub-section (*1*), it shall also consult concerned Advisory Board constituted under section 42.

(*4*) The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years.

Power of Central Government to fix floor wage.

9. (*1*) The Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed:

Provided that different floor wage may be fixed for different geographical areas.

(*2*) The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the floor wage and if the minimum rates of wages fixed by the appropriate Government earlier is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

(*3*) The Central Government may, before fixing the floor wage under sub-section (*1*), obtain the advice of the Central Advisory Board constituted under sub-section (*1*) of section 42 and consult State Governments in such manner as may be prescribed.

Wages of employee who works for less than normal working day.

10. If an employee whose minimum rate of wages has been fixed under this Code by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day:

Provided that he shall not be entitled to receive wages for a full normal working day,—

(*i*) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and

(*ii*) in such other cases and circumstances, as may be prescribed.

Wages for two or more classes of work.

11. Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

Minimum time rate wages for piece work.

12. Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the minimum time rate.

Fixing hours of work for normal working day.

13. (*1*) Where the minimum rates of wages have been fixed under this Code, the appropriate Government may —

(*a*) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;

(*b*) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

(*c*) provide for payment for work on a day of rest at a rate not less than the overtime rate.

(*2*) The provisions of sub-section (*1*) shall, in relation to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely:—

(*a*) employees engaged in any emergency which could not have been foreseen or prevented;

(*b*) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(*c*) employees whose employment is essentially intermittent;

(*d*) employees engaged in any work which for technical reasons has to be completed before the duty is over; and

(*e*) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(*3*) For the purposes of clause (*c*) of sub-section (*2*), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Wages for overtime work.

14. Where an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

CHAPTER III

PAYMENT OF WAGES

Mode of payment of wages.

15. All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode:

Provided that the appropriate Government may, by notification, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

Fixation of wage period.

16. The employer shall fix the wage period for employees either as daily or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month:

Provided that different wage periods may be fixed for different establishments.

Time limit for payment of wages.

17. (*1*) The employer shall pay or cause to be paid wages to the employees, engaged on—

(*i*) daily basis, at the end of the shift;

(*ii*) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;

(*iii*) fortnightly basis, before the end of the second day after the end of the fortnight;

(*iv*) monthly basis, before the expiry of the seventh day of the succeeding month.

(*2*) Where an employee has been—

(*i*) removed or dismissed from service; or

(*ii*) retrenched or has resigned from service, or became unemployed due to closure of the establishment,

the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

(*3*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*2*), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.

(*4*) Nothing contained in sub-section (*1*) or sub-section (*2*) shall affect any time limit for payment of wages provided in any other law for the time being in force.

Deductions which may be made from wages.

18. (*1*) Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorised under this Code.

Explanation.—For the purposes of this sub-section,—

(*a*) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;

(*b*) any loss of wages to an employee, for a good and sufficient cause, resulting from—

(*i*) the withholding of increment or promotion, including the stoppage of an increment; or

(*ii*) the reduction to a lower post or time-scale; or

(*iii*) the suspension,

shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

(*2*) Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be made only for the following purposes, namely:—

(*a*) fines imposed on him;

(*b*) deductions for his absence from duty;

(*c*) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(*d*) deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;

(*e*) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise and such deduction shall not exceed an amount equivalent to the value of such amenities and services.

Explanation.—For the purposes of this clause, the expression "services" does not include the supply of tools and raw materials required for the purposes of employment;

(*f*) deductions for recovery of—

(*i*) advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;

(*ii*) loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;

(*g*) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;

(*h*) deductions of income-tax or any other statutory levy levied by the Central Government or State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;

(*i*) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;

(*j*) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;

(*k*) deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926; 16 of 1926.

(*l*) deductions for recovery of losses sustained by the railway administration on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;

(*m*) deductions for recovery of losses sustained by the railway administration on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the railway administration whether in respect of fares, freight, demurrage, wharfage and cranage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;

(*n*) deductions for recovery of losses sustained by the railway administration on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;

(*o*) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify.

(*3*) Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (*2*) in any wage period from the wages of an employee shall not exceed fifty per cent. of such wages.

(*4*) Where the total deductions authorised under sub-section (*2*) exceed fifty per cent. of the wages, the excess may be recovered in such manner, as may be prescribed.

(*5*) Where any deduction is made by the employer from the wages of an employee under this section but not deposited in the account of the trust or Government fund or any other account, as required under the provisions of the law for the time being in force, such employee shall not be held responsible for such default of the employer.

Fines.

19. (*1*) No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (*2*).

(*2*) A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.

(*3*) No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(*4*) The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three per cent. of the wages payable to him in respect of that wage-period.

(*5*) No fine shall be imposed on any employee who is under the age of fifteen years.

(*6*) No fine imposed on any employee shall be recovered from him by instalments or after the expiry of ninety days from the day on which it was imposed.

(*7*) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(*8*) All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

Deductions for absence from duty.

20. (*1*) Deductions may be made under clause (*b*) of sub-section (*2*) of section 18 only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(*2*) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employment he was required to work:

Provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts

of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation.—For the purposes of this section, an employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Deductions for damage or loss.

21. (*1*) A deduction under clause (*c*) or clause (*n*) of sub-section (*2*) of section 18 for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.

(*2*) A deduction shall not be made under sub-section (*1*) until the employee has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(*3*) All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

Deductions for services rendered.

22. A deduction under clause (*d*) or clause (*e*) of sub-section (*2*) of section 18 shall not be made from the wages of an employee, unless the house-accommodation amenity or service has been accepted by him as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and shall be subject to such conditions as the appropriate Government may impose.

Deductions for recovery of advances.

23. Deductions under clause (*f*) of sub-section (*2*) of section 18 for recovery of advances given to an employee shall be subject to the following conditions, namely:—

(*a*) recovery of advance of money given to an employee before the employment began shall be made from the first payment of wages to him in respect of a complete wage-period but no recovery shall be made of such advances given for travelling expenses;

(*b*) recovery of advance of money given to an employee after the employment began shall be subject to such conditions as may be prescribed;

(*c*) recovery of advances of wages to an employee not already earned shall be subject to such conditions as may be prescribed.

Deductions for recovery of loans.

24. Deductions under clause (*g*) of sub-section (*2*) of section 18 for recovery of loans granted to an employee, regulating the extent to which such loans may be granted and the rate of interest payable thereon, shall be such as may be prescribed.

Chapter not to apply to Government establishments.

25. The provisions of this Chapter shall not apply to the Government establishments unless the appropriate Government, by notification, applies such provisions to the Government establishments specified in the said notification.

CHAPTER IV

PAYMENT OF BONUS

Eligibility for bonus, etc.

26. (*1*) There shall be paid to every employee, drawing wages not exceeding such amount per mensem, as determined by notification, by the appropriate Government, by his employer, who has put in at least thirty days work in an accounting year, an annual minimum bonus calculated at the rate of eight and one-third per cent. of the wages earned by the employee or one hundred rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year.

(*2*) For the purpose of calculation of the bonus where the wages of the employee exceeds such amount per mensem, as determined by notification by the appropriate Government, the bonus payable to such employee under sub-sections (*1*) and (*3*) shall be

calculated as if his wage were such amount, so determined by the appropriate Government or the minimum wage fixed by the appropriate Government, whichever is higher.

(*3*) Where in respect of any accounting year referred to in sub-section (*1*), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that sub-section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the wages earned by the employee during the accounting year, subject to a maximum of twenty per cent. of such wages.

(*4*) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.

(*5*) Any demand for bonus in excess of the bonus referred to in sub-section (*1*), either on the basis of production or productivity in an accounting year for which the bonus is payable shall be determined by an agreement or settlement between the employer and the employees, subject to the condition that the total bonus including the annual minimum bonus referred to in sub-section (*1*) shall not exceed twenty per cent. of the wages earned by the employee in the accounting year.

(*6*) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36.

(*7*) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply subject to the following modifications, namely:—

(*i*) for the sixth accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;

(*ii*) for the seventh accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

(*8*) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation 1.—For the purpose of sub-section (*6*), an employer shall not be deemed to have derived profit in any accounting year, unless—

(*a*) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income tax law; and

(*b*) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation 2.—For the purposes of sub-sections (*6*), (*7*) and (*8*), sale of the goods produced or manufactured during the course of the trial running of any factory or of the

prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

(*9*) The provisions of sub-sections (*6*), (*7*) and (*8*) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.

Proportionate reduction in bonus in certain cases.

27. Where an employee has not worked for all the working days in an accounting year, the minimum bonus under sub-section (*1*) of section 26, if such bonus is higher than eight and one third per cent. of the salary or wage of the days such employee has worked in that accounting year, shall be proportionately reduced.

Computation of number of working days.

28. For the purposes of section 27, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which,—

(*a*) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment; 20 of 1946. 14 of 1947.

(*b*) he has been on leave with salary or wages;

(*c*) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(*d*) the employee has been on maternity leave with salary or wages, during the accounting year.

Disqualification for bonus.

29. Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for—

(*a*) fraud; or

(*b*) riotous or violent behaviour while on the premises of the establishment; or

(*c*) theft, misappropriation or sabotage of any property of the establishment; or

(*d*) conviction for sexual harassment.

Establishments to include departments, undertakings and branches.

30. Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Code:

Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Code for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Payment of bonus out of allocable surplus.

31. (*1*) The bonus shall be paid out of the allocable surplus which shall be an amount equal to sixty per cent. in case of a banking company and sixty-seven per cent. in case of other establishment, of the available surplus and the available surplus shall be the amount calculated in accordance with section 33.

(*2*) Audited accounts of companies shall not normally be questioned.

(*3*) Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

Computation of gross profits.

32. The gross profits derived by an employer from an establishment in respect of the accounting year shall,—

(*a*) in the case of a banking company, be calculated in the manner as may be prescribed by the Central Government;

(*b*) in any other case, be calculated in the manner as may be prescribed by the Central Government.

Computation of available surplus.

33. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34:

Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of—

(*a*) the gross profits for that accounting year after deducting therefrom the sums referred to in section 34; and

(*b*) an amount equal to the difference between––

(*i*) the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(*ii*) the direct tax, calculated in accordance with provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

Sums deductible from gross profits.

34. The following sums shall be deducted from the gross profits as prior charges, namely:—

(*a*) any amount by way of depreciation admissible in accordance with the provisions of sub-section (*1*) of section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be;

(*b*) subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;

(*c*) such further sums in respect of the employer as may be prescribed by the Central Government.

Calculation of direct tax payable by employer.

35. For the purposes of this Code, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

(*a*) in calculating such tax no account shall be taken of,—

(*i*) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(*ii*) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (*2*) of section 32 of the Income-tax Act;

(*b*) where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so

exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

(*c*) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

(*d*) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

(*e*) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

Set on and set off of allocable surplus.

36. (*1*) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in such manner as may be prescribed by the Central Government.

(*2*) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 26, and there is no amount or sufficient amount carried forward and set on under sub-section (*1*) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in such manner as may be prescribed by the Central Government.

(*3*) The principle of set on and set off as may be provided in rules by the Central Government under this Code shall apply to all other cases not covered by sub-section (*1*) or sub-section (*2*) for the purpose of payment of bonus under this Code.

(*4*) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Adjustment of customary or interim bonus against bonus payable under this Code.

37. Where in any accounting year,—

(*a*) an employer has paid any puja bonus or other customary bonus to employee; or

(*b*) an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable,

then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

Deduction of certain amounts from bonus payable.

38. Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Code in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

Time limit for payment of bonus.

39. (*1*) All amounts payable to an employee by way of bonus under this Code shall be paid by crediting it in the bank account of the employee by his employer within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

(*2*) Notwithstanding anything contained in sub-section (*1*), where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid, within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute:

Provided that if, there is a dispute for payment at the higher rate, the employer shall pay eight and one-third per cent. of the wages earned by the employee as per the provisions of this Code within a period of eight months from the close of the accounting year.

Application of this Chapter to establishments in public sector in certain cases.

40. (*1*) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than twenty per cent. of the gross income of the establishment in public sector for that year, then, the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(*2*) Save as otherwise provided in sub-section (*1*), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

Non-applicability of this Chapter.

41. (*1*) Nothing in this Chapter shall apply to—

(*a*) employees employed by the Life Insurance Corporation of India;

(*b*) seamen as defined in clause (*42*) of section 3 of the Merchant Shipping Act, 1958;

44 of 1958.

(*c*) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;

9 of 1948.

(*d*) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;

(*e*) employees employed by—

(*i*) the Indian Red Cross Society or any other institution of a like nature including its branches;

(*ii*) universities and other educational institutions;

(*iii*) institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;

(*f*) employees employed by the Reserve Bank of India;

(*g*) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to—

(*i*) its capital structure;

(*ii*) its objectives and the nature of its activities;

(*iii*) the nature and extent of financial assistance or any concession given to it by the Government; and

(*iv*) any other relevant factor;

(*h*) employees employed by inland water transport establishments operating on routes passing through any other country; and

(*i*) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

(*2*) Subject to the provisions of sub-section (*1*) and notwithstanding anything contained in any other provisions of this Chapter, the provisions of this Chapter shall apply to such establishment in which twenty or more persons are employed or were employed on any day during an accounting year.

CHAPTER V

ADVISORY BOARD

Central Advisory Board and State Advisory Boards.

42. (*1*) The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government—

(*a*) representing employers;

(*b*) representing employees which shall be equal in number of the members specified in clause (*a*);

(*c*) independent persons, not exceeding one-third of the total members of the Board; and

(*d*) five representatives of such State Governments as may be nominated by the Central Government.

(*2*) One-third of the members referred to in sub-section (*1*) shall be women and a member specified in clause (*c*) of the said sub-section shall be appointed by the Central Government as the Chairperson of the Board.

(*3*) The Central Advisory Board constituted under sub-section (*1*) shall from time to time advise the Central Government on reference of issues relating to—

(*a*) fixation or revision of minimum wages and other connected matters;

(*b*) providing increasing employment opportunities for women;

(*c*) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and

(*d*) any other matter relating to this Code,

and on such advice, the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.

(*4*) Every State Government shall constitute a State Advisory Board for advising the State Government—

(*a*) in fixation or revision of minimum wages and other connected matters;

(*b*) for the purpose of providing increasing employment opportunities for women;

(*c*) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and

(*d*) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.

(*5*) The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in clauses (*a*) to (*d*) of sub-section (*4*).

(*6*) The State Advisory Board and each of the committees and sub- committees thereof shall consist of persons—

(*a*) representing employers;

(*b*) representing employees which shall be equal in number of the members specified in clause (*a*); and

(*c*) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be.

(*7*) One-third of the members referred to in sub-section (*6*) shall be women and one among the members specified in clause (*c*) of the said sub-section shall be—

(*a*) appointed by the State Government as the Chairperson of the Board;

(*b*) appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.

(*8*) In tendering its advice in the matters specified in clause (*b*) or clause (*c*) of sub-section (*4*), the State Advisory Board shall have regard to the number of women employed in the concerned establishment, or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the Board may think fit.

(*9*) The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishment or employees or any other person which that Government thinks fit, issue such direction as may be deemed necessary.

(*10*) The Central Advisory Board referred to in sub-section (*1*) and the State Advisory Board referred to in sub-section (*4*) shall respectively regulate their own procedure including that of the committees and sub-committees constituted by the State Advisory Board, in such manner as may be prescribed.

(*11*) The terms of office of the Central Advisory Board referred to in sub-section (*1*) and the State Advisory Board referred to in sub-section (*4*) including that of the committees and sub-committees constituted by the State Advisory Board, shall be such as may be prescribed.

CHAPTER VI

PAYMENT OF DUES, CLAIMS AND AUDIT

Responsibility for payment of various dues.

43. Every employer shall pay all amounts required to be paid under this Code to every employee employed by him:

Provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

Explanation.—For the purposes of this section the expression "firm" shall have the same meaning as assigned to it in the Indian Partnership Act, 1932. 9 of 1932.

Payment of various undisbursed dues in case of death of employee.

44. (*1*) Subject to the other provisions of this Code, all amounts payable to an employee under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known,—

(*a*) be paid to the person nominated by him in this behalf in accordance with the rules made under this Code; or

(*b*) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the such authority, as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.

(*2*) Where in accordance with the provisions of sub-section (*1*), all amounts payable to an employee under this Code—

(*a*) are paid by the employer to the person nominated by the employee; or

(*b*) are deposited by the employer with the authority referred to in clause (*b*) of sub-section (*1*),

then, the employer shall be discharged of his liability to pay those amounts.

Claims under Code and procedure thereof.

45. (*1*) The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arises under the provisions of this Code.

(*2*) The authority appointed under sub-section (*1*), while deciding the claim under that sub-section, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined and endeavour shall be made by the authority to decide the claim within a period of three months.

(*3*) If an employer fails to pay the claim determined and compensation ordered to be paid under sub-section (*2*), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.

(*4*) Any application before the authority for claim referred to in sub-section (*1*) may be filed by,—

(*a*) the employee concerned; or

(*b*) any Trade Union registered under the Trade Unions Act, 1926 of which the employee is a member; or 16 of 1926.

(*c*) the Inspector-cum-Facilitator.

(*5*) Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.

(*6*) The application under sub-section (*4*) may be filed within a period of three years from the date on which claims referred to in sub-section (*1*) arises:

Provided that the authority referred to in sub-section (*1*) may, entertain the application after three years on sufficient cause being shown by the applicant for such delay.

(*7*) The authority appointed under sub-section (*1*) and the appellate authority appointed under sub-section (*1*) of section 49, shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 5 of 1908. 2 of 1974.

Reference of disputes under this Code.

46. Notwithstanding anything contained in this Code, where any dispute arises between an employer and his employees with respect to—

(*a*) fixation of bonus or eligibility for payment of bonus under the provisions of this Code; or

(*b*) the application of this Code, in respect of bonus, to an establishment in public sector,

then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947. 14 of 1947.

Presumption about accuracy of balance sheet and profit and loss account of corporations and companies.

47. (*1*) Where, during the course of proceedings before—

(*a*) the authority under section 45; or

(*b*) the appellate authority under section 49; or

(*c*) a Tribunal; or

(*d*) an arbitrator referred to in clause (*aa*) of section 2 of the Industrial Disputes Act, 1947, 14 of 1947.

in respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under section 141 of the Companies Act, 2013, are produced before it, then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode: 18 of 2013.

Provided that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

(*2*) When an application is made to the authority, appellate authority, Tribunal or arbitrator, as the case may be, referred to in sub-section (*1*), by any Trade Union being a party to the dispute or as the case may be, an appeal, and where there is no Trade Union, by the employees being a party to the dispute, or as the case may be, an appeal, requiring any clarification relating to any item in the balance sheet or the profit and loss account, then such authority, appellate authority, Tribunal or arbitrator, may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

Audit of account of employers not being coporations or companies.

48. (*1*) Where any claim, dispute or appeal with respect to bonus payable under this Code between an employer, not being a corporation or a company, and his employees is pending before any authority, appellate authority, Tribunal or arbitrator, as the case may be, as referred to in sub-section (*1*) of section 47 and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under the provisions of section 141 of the Companies Act, 2013, are produced before such authority, appellate authority, Tribunal or arbitrator, then the provisions of section 47 shall, so far as may be, apply to the accounts so audited. 18 of 2013.

(*2*) When the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (*1*), as the case may be, finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, such authority, appellate authority, Tribunal or arbitrator, may, by order, direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.

(*3*) Where an employer fails to get the accounts audited under sub-section (*2*), the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (*1*), as the case may be, may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.

(*4*) When the accounts are audited under sub-section (*2*) or sub-section (*3*), the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

(*5*) The expenses of, and incidental to, any audit under sub-section (*3*) including the remuneration of the auditor or auditors shall be determined by the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (*1*), as the case may be, and paid by the employer and in default of such payment shall be recoverable by the authority referred to in sub-section (*3*) of section 45 from the employer in the manner provided in that sub-section.

Appeal.

49. (*1*) Any person aggrieved by an order passed by the authority under sub-section (*2*) of section 45 may prefer an appeal, to the appellate authority having jurisdiction appointed by the appropriate Government, by notification, for such purpose, within ninety days from the date of such order, in such form and manner as may be prescribed:

Provided that the appellate authority may entertain the appeal after ninety days if it satisfied that the delay in filing the appeal has occurred due to sufficient cause.

(*2*) The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under sub-section (*1*) of section 45.

(*3*) The appellate authority shall, after hearing the parties in the appeal, dispose of the appeal and endeavour shall be made to dispose of the appeal within a period of three months.

(*4*) The outstanding dues under the orders of the appellate authority shall be recovered by the authority referred to in section 45, by issuing the certificate of recovery in the manner specified in sub-section (*3*) of that section.

Records, returns and notices.

50. (*1*) Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages and such other details in such manner as may be prescribed.

(*2*) Every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and address of the Inspector-cum-Facilitator having jurisdiction.

(*3*) Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.

(*4*) The provisions of sub-sections (*1*) to (*3*) shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose:

Provided that such employer, when demanded, shall produce before the Inspector-cum-Facilitator, the reasonable proof of the payment of wages to the persons so employed.

Explanation.—For the purposes of this sub-section, the expression "domestic purpose" means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation.

CHAPTER VII

INSPECTOR-CUM-FACILITATOR

Appointment of Inspector-cum-Facilitators and their powers.

51. (*1*) The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for the purposes of this Code who shall exercise the powers conferred on them under sub-section (*4*) throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.

(*2*) The appropriate Government may, by notification, lay down an inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically.

(*3*) Without prejudice to the provisions of sub-section (*2*), the appropriate Government may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code to the Inspector-cum-Facilitator as may be specified in such notification.

(*4*) Every Inspector-cum-Facilitator appointed under sub-section (*1*) shall be deemed
45 of 1860. to be public servant within the meaning of section 21 of the Indian Penal Code.

(*5*) The Inspector-cum-Facilitator may—

(*a*) advice to employers and workers relating to compliance with the provisions of this Code;

(*b*) inspect the establishments as assigned to him by the appropriate Government,

subject to the instructions or guidelines issued by the appropriate Government from time to time.

(*6*) Subject to the provisions of sub-section (*4*), the Inspector-cum-Facilitator may,—

(*a*) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is a worker of the establishment;

(*b*) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

(*c*) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;

(*d*) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and

(*e*) exercise such other powers as may be prescribed.

(*7*) Any person required to produce any document or to give any information required by a Inspector-cum-Facilitator under sub-section (*5*) shall be deemed to be legally bound to
45 of 1860. do so within the meaning of section 175 and section 176 of the Indian Penal Code.

2 of 1974. (*8*) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-section (*5*) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

CHAPTER VIII

OFFENCES AND PENALTIES

Cognizance of offences.

52. (*1*) No court shall take cognizance of any offence punishable under this Code, save on a complaint made by or under the authority of the appropriate Government or an officer authorised in this behalf, or by an employee or a registered Trade Union registered under the Trade Unions Act, 1926 or an Inspector-cum-Facilitator. 16 of 1926.

(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try the offences under this Code. 2 of 1974.

Power of officers of appropriate Government to impose penalty in certain cases.

53. (*1*) Notwithstanding anything contained in section 52, for the purpose of imposing penalty under clauses (*a*) and (*c*) of sub-section (*1*) and sub-section (*2*) of section 54 and sub-section (*7*) of section 56, the appropriate Government may appoint any officer not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government, as the case may be, for holding enquiry in such manner, as may be prescribed by the Central Government.

(*2*) While holding the enquiry, the officer referred to in sub-section (*1*) shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of such officer, may be useful for or relevant to the subject matter of the enquiry and if, on such enquiry, he is satisfied that the person has committed any offence under the provisions referred to in sub-section (*1*), he may impose such penalty as he thinks fit in accordance with such provisions.

Penalties for offences.

54. (*1*) Any employer who—

(*a*) pays to any employee less than the amount due to such employee under the provisions of this Code shall be punishable with fine which may extend to fifty thousand rupees;

(*b*) having been convicted of an offence under clause (*a*) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both;

(*c*) contravenes any other provision of this Code or any rule made or order made or issued thereunder shall be punishable with fine which may extend to twenty thousand rupees;

(*d*) having been convicted of an offence under clause (*c*) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to forty thousand rupees, or with both.

(*2*) Notwithstanding anything contained in sub-section (*1*), for the offences of non-maintenance or improper maintenance of records in the establishment, the employer shall be punishable with fine which may extend to ten thousand rupees.

(*3*) Notwithstanding anything contained in clause (*c*) of sub-section (*1*) or sub-section (*2*), the Inspector-cum-Facilitator shall, before initiation of prosecution proceeding for the offences under the said clause or sub-section, give an opportunity to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with

the direction within such period, the Inspector-cum-Facilitator shall not initiate such prosecution proceeding and, no such opportunity shall be accorded to an employer, if the violation of the same nature of the provisions under this Code is repeated within a period of five years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Code.

Offences by companies.

55. (*1*) If the person committing an offence under this Code is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means anybody corporate and includes—

(*i*) a firm; or

(*ii*) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or

6 of 2009.

(*iii*) other association of individuals; and

(*b*) "director" in relation to a firm means a partner in the firm.

Composition of offences.

2 of 1974.

56. (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent. of the maximum fine provided for such offence, in the manner as may be prescribed.

(*2*) Nothing contained in sub-section (*1*) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date— (*i*) of commission of a similar offence which was earlier compounded; (*ii*) of commission of similar offence for which such person was earlier convicted.

(*3*) Every officer referred to in sub-section (*1*) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.

(*4*) Every application for the compounding of an offence shall be made in such manner as may be prescribed.

(*5*) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(*6*) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (*1*) in writing, to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

(*7*) Any person who fails to comply with an order made by the officer referred to in sub-section (*1*), shall be punishable with a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

(*8*) No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section.

CHAPTER IX

MISCELLANEOUS

Bar of suits.

57. No court shall entertain any suit for the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus, in so far as the sum so claimed—

(*a*) forms the subject of claims under section 45;

(*b*) has formed the subject of a direction under this Code;

(*c*) has been adjudged in any proceeding under this Code;

(*d*) could have been recovered under this Code.

Protection of action taken in good faith.

58. No suit, prosecution or any other legal proceeding shall lie against the appropriate Government or any officer of that Government for anything which is in good faith done or intended to be done under this Code.

Burden of proof.

59. Where a claim has been filed on account of non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Code from the wages of an employee, the burden to prove that the said dues have been paid shall be on the employer.

Contracting out.

60. Any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under this Code shall be null and void in so far as it purports to remove or reduce the liability of any person to pay such amount under this Code.

Effect of laws agreements, etc., inconsistent with this Code.

61. The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

Delegation of powers.

62. The appropriate Government may, by notification, direct that any power exercisable by it under this Code shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be also exercisable—

(*a*) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;

(*b*) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

Exemption of employer from liability in certain cases.

63. Where an employer is charged with an offence under this Code, he shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

(*a*) that he has used due diligence to enforce the execution of this Code; and

(*b*) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Code in respect of such offence:

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

Protection against attachments of assets of employer with Government.

64. Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

Power of Central Government to give directions.

65. The Central Government may, for carrying into execution of the provisions of this Code in the State give directions to the State Government, and the State Government shall abide by such directions.

Saving.

66. Nothing contained in this Code shall be deemed to affect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or of any scheme made thereunder.

42 of 2005.
46 of 1948.

Power of appropriate Government to make rules.

67. (*1*) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the provisions of this Code.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner of calculating the wages under sub-section (*4*) of section 6;

(*b*) the arduousness of work to be taken into account in addition to minimum rate of wages for certain category of workers under clause (*b*) of sub-section (*6*) of section 6;

(*c*) the norms under clause (*c*) of sub-section (*6*) of section 6;

(*d*) the cases and circumstances in which an employee employed for a period of less than the requisite number of hours shall not be entitled to receive wages for a full normal working day, under section 10;

(*e*) the extent and conditions, which shall apply in relation to certain classes of employees under sub-section (*2*) of section 13;

(*f*) the longer wage period for fixation of minimum rate of wages as referred to in section 14;

(*g*) the manner of deducting loans made from any fund constituted for the welfare of labour under sub-clause (*ii*) of clause (*f*) of sub-section (*2*) of section 18;

(*h*) the manner of recovery of excess of amount under sub-section (*4*) of section 18;

(*i*) the authority to provide approval for imposition of fine under sub-section (*1*) of section 19;

(*j*) the manner of exhibition of the acts and omissions to be specified in the notice under sub-section (*2*) of section 19;

(*k*) the procedure for the imposition of fines under sub-section (*3*) of section 19;

(*l*) the form of the register to record all fines and all realisations thereof under sub-section (*8*) of section 19;

(*m*) the procedure for making deductions for absence from duty under sub-section (*2*) of section 20;

(*n*) the procedure for making deductions for damage or loss under sub-section (*2*) of section 21;

(*o*) the form of the register to record all deductions and all realisations thereof under sub-section (*3*) of section 21;

(*p*) conditions for recovery of advance of money given to an employee after the employment began under clause (*b*) of section 23;

(*q*) conditions for recovery of advances of wages to an employee not already earned under clause (*c*) of section 23;

(*r*) deductions for recovery of loans and the rate of interest payable thereon under section 24;

(*s*) the manner of regulating the procedure by the Central Advisory Board and the State Advisory Board, including that of the committees and sub-committees constituted by the State Advisory Board, under sub-section (*10*) of section 42;

(*t*) the terms of office of members of the Central Advisory Board, the State Advisory Board, including that of the committees and sub-committees constituted by the State Advisory Board, under sub-section (*11*) of section 42;

(*u*) the authority and manner of depositing with such authority, various undisbursed dues under clause (*b*) of sub-section (*1*) of section 44;

(*v*) the form of single application in respect of a number of employees under sub-section (*5*) of section 45;

(*w*) the form for making an appeal to the appellate authority under sub-section (*1*) of section 49;

(*x*) the manner of maintenance of a register by the employer under sub-section (*1*) of section 50;

(*y*) the form and manner of issuing wage slips under sub-section (*3*) of section 50;

(*z*) the other powers to be exercised by the Inspector-cum-Facilitator under sub-section (*5*) of section 51;

(*za*) the manner of imposing fine under sub-section (*1*) of section 56;

(*zb*) the manner of composition of offence by a Gazetted Officer specified under sub-section (*4*) of section 56;

(*zc*) any other matter which is required to be, or may be, prescribed under the provisions of this Code.

(*3*) The Central Government may, subject to the condition of previous publication, make rules for,—

(*a*) the manner of fixing floor wage under sub-section (*1*) of section 9;

(*b*) the manner of consultation with State Government under sub-section (*3*) of section 9;

(*c*) the manner of making set on or set off for the sixth accounting year under clause (*i*) of sub-section (*7*) of section 26;

(*d*) the manner of making set on or set off for the seventh accounting year under clause (*ii*) of sub-section (*7*) of section 26;

(*e*) the manner of calculating gross profit under clauses (*a*) and (*b*) of section 32;

(*f*) such further sums in respect of employer under clause (*c*) of section 34;

(*g*) the manner of utilising the excess of allocable surplus to be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year under sub-section (*1*) of section 36;

(*h*) the manner of utilising the minimum amount or the deficiency to be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year under sub-section (*2*) of section 36; and

(*i*) the manner of holding an enquiry under sub-section (*1*) of section 53.

(*4*) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions as aforesaid, both Houses agree in making any modification in the rule or both Houses agree that rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

(*5*) Every rule made by the State Government under this section shall, as soon as possible after it is made, be laid before the State Legislature.

Power to remove difficulties.

68. (*1*) If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of three years from the commencement of this Code.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and savings.

4 of 1936.
11 of 1948.
21 of 1965.
25 of 1976.

69. (*1*) The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 are hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the enactments so repealed including any notification, nomination, appointment, order or direction made thereunder or any amount of wages provided in any provision of such enactments for any purpose shall be deemed to have been done or taken or provided for such purpose under the corresponding provisions of this Code and shall be in force to the extent they are not contrary to the provisions of this Code till they are repealed under the corresponding provisions of this Code or by the notification to that effect by the Central Government.

10 of 1897.

(*3*) Without prejudice to the provisions of sub-section (*2*), the provisions of section 6 of the General Clauses Act, 1897 shall apply to the repeal of such enactments.